


Reply Brief
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Dated: November 30, 2009 Signature:


(Donna Dobson)

Docket No.: 46030/P045US/10407184
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Timothy E. Ostromek et al.

Application No.: 10/759,959

Confirmation No.: 8182

Filed: January 16, 2004

Art Unit: 2622

For: **COMBINING MULTIPLE SPECTRAL BANDS
TO GENERATE AN IMAGE**

Examiner: A. H. Cutler

REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

As required under § 41.41(a)(1), this Reply Brief is filed within two (2) months of the Examiner's Answer dated September 29, 2009, and is in furtherance of the Appeal Brief, filed on June 19, 2009.

No fee is required for this REPLY BRIEF.

This brief contains items under the following headings pursuant to M.P.E.P. § 1208:

- I. Status of Claims
- II. Grounds of Rejection to be Reviewed on Appeal
- III. Argument
- IV. Conclusion

I. STATUS OF CLAIMS

The status of claims remains as identified in the Appeal Brief submitted June 19, 2009 which is as follows:

A. Total Number of Claims in Application

There are 19 claims pending in the application.

B. Current Status of Claims

1. Claims canceled: 4, 10, and 16
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-3, 5-9, 11-15, and 17-22
4. Claims allowed: None
5. Claims rejected: 1-3, 5-9, 11-15, and 17-22

C. Claims On Appeal

The claims on appeal are claims 1-3, 5-9, 11-15, and 17-22.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed remain as identified in the Appeal Brief submitted June 19, 2009, which are as follows:

First Ground of Rejection – Claims 1, 5, 7, 11, 13, 17, and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by EP 1051045 (hereinafter *Daly*).

Second Ground of Rejection – Claims 21 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Daly* in view of US 5,936,245 (hereinafter *Goillot*).

Third Ground of Rejection – Claims 2, 3, 8, 9, 14, and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Daly* in view of US 5,528,295 (hereinafter *Wagner*).

Fourth Ground of Rejection – Claims 6, 12, and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Daly* in view of US 5,347,378 (hereinafter *Handschy*).

Fifth Ground of Rejection – Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Daly* in view of *Wagner*, and further in view of *Handschy*.

III. ARGUMENT

For the sake of brevity, the arguments in this Reply Brief do not repeat the arguments presented in the Appeal Brief. Instead, this Reply Brief addresses specific assertions and issues raised by the Examiner's Answer.

Since 37 C.F.R. §41.41 does not specify a format for Reply Briefs, Appellant presents the arguments below in a format organized to counter the Response to Arguments section of the Examiner's Answer rather than to conform to the format for an Appeal Brief, wherein independently argued claims are presented under separate headings. The format of this Reply does not cause claims to be considered together or separately other than as presented in the Appeal Brief. It is believed that this eliminates repetition and is done for the convenience of the Board.

The Response to Arguments section of the Examiner's Answer focuses on the issue of whether *Daly*'s field to frame combining includes either "adding" or "weighted combining," as required by the independent claims.¹ Examiner's Answer at 34-37. In the Appeal Brief, Appellant shows that *Daly* teaches combining but does not include details about the combining to such a degree that *Daly* shows either adding or weighted combining. Appeal Brief at 7-9.

The Examiner's Answer appears to concede that *Daly* does not teach field to frame combining that includes adding the fields themselves, but the Examiner's Answer states that the three separate "fields are added to a single frame." Examiner's Answer at 36. "This does not imply that the three fields are added to each other, but rather simply that they are added into a frame." *Id.* at 35.

¹ *E.g.*, claim 1 recites, in part, "multiplexing the spectral bands in accordance with the function to combine the spectral bands, said function causing said spectral bands to be combined using at least one of: adding and weighted combining...."

Appellant had to read such statement more than once before understanding the Examiner's position. Apparently, the Examiner deems the combining itself to be adding. In other words, the Examiner takes the position that any method of placing a field into a frame is "adding" the field to the frame. It is a clever rhetorical trick, but it misses the point by eviscerating the word "adding," and it is inconsistent with how the term is used in the claims.

For instance, under the Examiner's rationale, combining is always coextensive with adding. However, the independent claims use the terms, "combined" and "adding" such that "adding" adds a particular level of detail to the combining itself; adding is one way of performing the combining (weighted combining is one other). The Examiner's interpretation mars the claim language by attempting to fold the combining into the adding, whereas the claim language recites combining and adding as separate concepts residing in different levels of abstraction. Thus, the Examiner's Answer has obfuscated the issue and failed to show that *Daly* satisfies the claim language.

Furthermore, the Response to Arguments section of the Examiner's Answer ends by attempting to show that *Daly* teaches combining using weighted combining. *Id.* at 36-37. Specifically, the Examiner's Answer cites *Daly* at columns 11-12 and 14 at passages that refer to color reproduction processor 120 and "specific scaling and offsets" applied to the U and V signals. *Id.* The relevance of such cited passages is not apparent from the passages themselves or from the rejection. Appellant sees nothing in *Daly* at the passage at column 11, line 57, through column 12, line 3, that teaches that the color reproduction processor 120 applies weighted combining. Similarly, Appellant sees nothing in the passage at column 14, lines 5-8, that teaches that the "scaling and offsets" include weighted combining.

Thus, the cited passages of *Daly* do not teach adding or weighted combining. For at least the reasons above and the reasons presented in the Appeal Brief, the first through fifth grounds of rejection should be reversed and the claims allowed.

IV. CONCLUSION

Appellant believes no fee is due with this response. Please charge any fees required or credit any overpayment to Deposit Account No. 06-2380, under Order No. 46030/P045US/10407184 during the pendency of this Application pursuant to 37 CFR 1.16

through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

Dated: November 20, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas Kelton', written over a horizontal line.

By
Thomas Kelton
Registration No.: 54,214
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-7115
(214) 855-8200 (Fax)
Attorney for Appellant